REMARKS

Applicant has carefully reviewed the Final Office Action mailed January 24, 2008 and offers the following remarks.

Claims 1-10, 12-21, 23, 25-28, 30, and 32-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,237,260 B2 to Yu et al. (hereinafter "Yu"). Applicant respectfully traverses.

For a reference to be anticipatory, the reference must disclose each and every claim element. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. The requirement that each and every element be disclosed in the manner claimed is a rigorous standard that the Patent Office has not met in this case.

Applicant maintains and reiterates its previous arguments that Yu does not qualify as prior art under 35 U.S.C. § 102(e) (see Response filed November 13, 2007). The filing date of the Yu reference is July 8, 2003. Based on the declarations previously filed under 37 CFR § 1.131 and Applicant's previous arguments, Applicant respectfully submits that the date of invention for the present application was prior to July 8, 2003 and that diligent action was taken from a time period prior to July 8, 2003, through the filing of the present application to constructively reduce the invention to practice. Therefore, Yu was not filed before Applicant's present invention. Thus, Yu does not qualify as prior art under 35 U.S.C. § 102(e). As such, the rejection of claims 1-10, 12-21, 23, 25-28, 30, and 32-35 as being anticipated by Yu is improper and should be withdrawn.

The Patent Office argues that Applicant has not shown sufficient evidence to demonstrate conception of the present invention prior to the filing date of Yu. In particular, the Patent Office alleges there is no mapping of the claims in Appendix A (Final Office Action mailed January 24, 2008, p. 9). Applicant points out that in its previous response, Applicant provided a mapping of claim 1, in which Applicant provided cites to where support for the elements of claim 1 were found in Appendix A (the Invention Disclosure) (see Response filed November 13, 2007, p. 3). Appendix A (the Invention Disclosure) together with the mapping and arguments in the response filed November 13, 2007, provide sufficient evidence of conception prior to the filing date of Yu. Applicant also notes that a first draft of the Patent Application was completed on June 5, 2003 (see Declaration of Benjamin S. Withrow, paragraph 8; Declaration of Dany Sylvain, paragraph 8). Thus, a draft patent application was completed prior to the filing date of Yu, which is further

evidence of conception. MPEP § 2138.06 ("Conception was established at least as early as the date a draft of the patent application was finished by a patent attorney on behalf of the inventor.")

The Patent Office also asserts that Applicant has not shown diligence and specifically points to a gap from June 5, 2003 to August 21, 2003 (Final Office Action mailed January 24, 2008, p. 9). However, all that is required for diligence is that Applicant account for the period during which diligence is required. MPEP § 2138.06. From June 5, 2003 until August 21, 2003, the inventor Dany Sylvain was reviewing the draft application and making comments regarding the draft patent application (see Declaration of Dany Sylvain, paragraph 9). The diligence required may be attorney diligence or engineering diligence, which does not require that "an inventor or his attorney . . . drop all other work and concentrate on the particular invention involved . . . ." MPEP § 2138.06, citing *Emery v. Ronden*, 188 U.S.P.Q. 264, 268 (BPAI 1974). During the period of time from June 5, 2003 until August 21, 2003, the inventor was reviewing the draft application and making comments. Thus, Applicant has accounted for that period of time, especially in light of the case law that states that the attorney and the inventor need not drop all other work. Accordingly, based on the previously submitted declarations and arguments, Applicant respectfully submits that from a date prior to July 8, 2003 (the filing date of Yu), diligent action was taken by Applicant's representative, Benjamin S. Withrow; the inventor, Mr. Sylvain; and the assignee of the present application to constructively reduce the invention to practice through the filing of the instant patent application on October 24, 2003. (See Declaration of Benjamin S. Withrow, paragraphs 3-14; and Declaration of Dany Sylvain, paragraphs 5-12).

In any event, even if Yu can be considered prior art under 35 U.S.C. § 102(e), a point Applicant does not concede, Yu does not anticipate the claimed invention as Yu does not teach each and every element of the claimed invention.

Claim 1 recites a method for facilitating communications between a user element and a protected network resource comprising:

a) establishing a first tunneling session with the user element via a first access network;

b) assigning to the user element a first target network protected address for addressing packets intended for the protected network resource and traveling in part over the first tunneling session;

c) establishing a second tunneling session with the user element via a second access network; and

d) reassigning to the user element the first target network protected address for addressing packets intended for the protected network resource and traveling in part over the second tunneling session.

Thus, the invention of claim 1 requires a first tunneling session to be established via a first access network and a second tunneling session to be established over a second access network. Yu does not disclose establishing two tunneling sessions over different access networks. In fact, Yu only discloses a single access network (see Yu, col. 1, lines 8-10 ("The present invention relates to communication protocols in **a** network, and more particularly to tunneling in **a** network using different communication protocols") (emphasis added); see also Figure 1). The Patent Office refers to column 1, lines 49-55 of Yu (Final Office Action mailed January 24, 2008, p. 3). Column 1, lines 49-55 of Yu merely discloses a method for establishing communication in a single network having two network peers. There is no discussion of establishing two tunneling sessions over two different access networks. Thus, Yu does not teach each and every element of claim 1 in which a first tunneling session is established via a first access network and a second tunneling session is established over a second access network. As such, Yu does not anticipate claim 1.

Independent claims 12, 23, and 30 all recite limitations similar to those in claim 1. Thus, claims 12, 23, and 20 are patentable over Yu for at least the same reasons as set forth above with respect to claim 1.

Independent claims 23 and 30 also recite that the first and second tunneling sessions are established with the first and second access networks via a tunnel access server. Yu does not teach the claimed tunnel access server. Claims 23 and 30 are thus patentable for this additional reason.

Claims 11, 22, 24, 29, 31, and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yu in view of U.S. Patent No. 7,020,464 B2 to Bahl et al. (hereinafter "Bahl"). Applicant respectfully traverses. As discussed above, Yu does not teach each and every element

of independent claims 1, 12, 23, and 30. Claims 11, 22, 24, 29, 31, and 36 all depend directly or indirectly from one of the independent claims and are thus patentable based on their dependency from their respective independent claim. In particular, Yu does not disclose that a first tunneling session is established via a first access network and a second tunneling session is established over a second access network, as recited in the independent claims. Bahl also does not disclose establishing two tunneling sessions over two access networks. Thus, Bahl does not correct the deficiencies of Yu, and the combination of Yu and Bahl does not teach or suggest each and every element of the claimed invention. As such, claims 11, 22, 24, 29, 31, and 36 are patentable over the cited references.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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